

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KRISTEN ERWIN,

Plaintiff,

v.

DEFENSE HEALTH AGENCY,

Defendant.

No. 2:24-cv-2126 DJC AC

THIRD ORDER TO SHOW CAUSE

Plaintiff, appearing in pro se, filed a complaint and paid the filing fee on August 7, 2024. ECF No. 1. The same day, a summons and scheduling order was issued directing the plaintiff to serve a copy of the scheduling order and complete service of process within 90 days of filing the complaint. ECF Nos. 2, 3. Plaintiff was cautioned that failure to complete service within 90 days may result in dismissal pursuant to Fed. R. Civ. P. 40(m). Id. On August 19, 2024, plaintiff filed an affidavit of service. ECF No. 4. The affidavit indicated that indicated that Patriot Process Service served a paralegal at the Office of General Counsel for the Defense Health Agency at 7700 Arlington Blvd. in Falls Church, Virginia. ECF No. 4 at 2.

On December 11, 2024, the undersigned issued an Order to Show Cause explaining to plaintiff that her proof of service did not demonstrate that service has been properly completed. ECF No. 8. The court explained that Federal Rule of Civil Procedure 4(i) outlines the rule for serving the United States, as well as its agencies and employees. The Rule requires a plaintiff to

1 take three steps:

2 (A)(i) deliver a copy of the summons and of the complaint to the  
3 United States attorney for the district where the action is brought—  
4 or to an assistant United States attorney or clerical employee whom  
5 the United States attorney designates in a writing filed with the court  
6 clerk—or (ii) send a copy of each by registered or certified mail to  
7 the civil-process clerk at the United States attorney’s office;

8 (B) send a copy of each by registered or certified mail to the Attorney  
9 General of the United States at Washington, D.C.; and

10 (C) if the action challenges an order of a nonparty agency or officer  
11 of the United States, send a copy of each by registered or certified  
12 mail to the agency or officer.

13 Fed. R. Civ. P. 4(i)(1). The Attorney General has designated the Assistant Attorney General for  
14 Administration, Justice Management Division, to accept service of summonses and complaints.

15 28 C.F.R. § 0.77(j). The U.S. Department of Justice is located at 950 Pennsylvania Avenue, NW,  
16 Washington, DC 20530-0001. Additionally, to sue a United States Agency such as the Defense  
17 Health Agency, “a party must serve the United States *and also* send a copy of the summons and  
18 of the complaint by registered or certified mail to the agency, corporation, officer, or employee.”  
19 Fed. R. Civ. P. 4(i)(2) (emphasis added).

20 Plaintiff was ordered to properly complete service and file a notice to the court  
21 demonstrating that service was completed. On December 30, 2024, plaintiff responded to the  
22 order to show cause. ECF No. 9. Plaintiff asked the court not to dismiss the case and stated that  
23 she “attached proof of proper service of defendants.” Id. at 1. However, plaintiff also stated that  
24 she hired a process server who has been unable to serve the Department of Justice. Id. Plaintiff  
25 stated she purchased reference materials in order to help her prosecute this case. Id. at 2.

26 On February 13, 2025, the court issued a Second Order to Show Cause, explaining that  
27 while court appreciates the difficulty of appearing in pro se, this case cannot proceed if defendant  
28 is not properly served. The court noted that plaintiff’s response to the first Order to Show Cause  
does not demonstrate that she has properly completed service in accordance with the instructions  
in Rule 4(i). Plaintiff was given a second and final opportunity to properly complete service in  
accordance with the instructions above.

Plaintiff filed a response to the Second Order to Show Cause on February 21, 2025. ECF

No. 11. She filed a proof of service on the Defense Health Agency, stating that the summons and complaint were sent by certified mail and accepted by the Department of Justice on behalf of the Defense Health Agency. ECF No. 11 at 3. The Certified Mail Receipt indicates that service was mailed to 950 Pennsylvania Ave. NW, Washington, DC. Id. at 4. Plaintiff also re-attached proof of service to the Defense Health Agency at the Falls Church, VA address. Id. at 11. To date, no defendant has appeared.


Plaintiff appears to have served the Department of Health Agency and the Attorney General, but she has again failed to serve the United States Attorney's Office. The United States Attorney's Office can be served at 501 I Street, Suite 10-100, Sacramento, CA 95814. Out of concern that the need to serve this office was not made sufficiently clear in prior orders, the court will grant plaintiff one final opportunity to properly complete service.

Plaintiff is hereby ORDERED to properly complete service in the manner described above within 14 days of this Order, including service of the United States Attorney's Office. Plaintiff must file a notice with the court affirming that service has been properly completed. Local Rule 110 provides that failure to comply with court orders or the Local Rules may be grounds for imposition of any and all sanctions authorized by statute or Rule or within the inherent power of the Court.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff is Ordered to Show Cause, in writing no later than June 17, 2025, why this action should not be dismissed for failure to prosecute;
2. Plaintiff's filing of proper proofs of service upon defendants will be deemed good cause shown; and
3. If plaintiff fails to comply with this order, the case will be dismissed without prejudice for failure to prosecute.

DATED: June 2, 2025

  
ALLISON CLAIRE  
UNITED STATES MAGISTRATE JUDGE